

## 48A C.J.S. Judges § 60

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### III. Term and Tenure of Office; Vacancy

#### D. Duration of Term

### § 60. Holding over

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#) 9

**Generally, the person chosen to fill a judicial office is entitled to hold such office until his or her successor is selected and has qualified.**

In many jurisdictions, by force of constitution or statutory provisions, when the law creates a judicial office, and designates the term, the person chosen to fill the office will hold over until his or her successor is selected and has qualified.<sup>1</sup> Thus, a constitutional provision that officers continue in their offices until their successors are duly qualified applies to judges,<sup>2</sup> preventing gaps between the time one judge leaves office and another takes the office.<sup>3</sup> However, provisions for holding over refer to a reasonable extension of tenure, and there is generally no holding over beyond a vacating of office by the incumbent.<sup>4</sup>

In some jurisdictions, even in the absence of constitutional or statutory provisions, it is not only a judge's right but also his or her duty<sup>5</sup> to hold over. Additionally, where provided, a judge may hold over regardless of the cause that may prevent the selection and qualification of his or her successor.<sup>6</sup>

The principle of holding over does not apply to a newly created office in that there can be no incumbent in such instance.<sup>7</sup> Where the old judicial system or office ceases to exist at a given time, the incumbent cannot hold over until his or her successor has been elected and has qualified.<sup>8</sup> Where a judge has been elected and has qualified, but dies before the end of his or her predecessor's term of office, the predecessor is not entitled to hold over<sup>9</sup> unless the deceased judge-elect had not yet qualified.<sup>10</sup>

Where the law provides for holding over, the holdover period is as much a part of the judge's term as the period within the statutory term<sup>11</sup> so that the judge is a judge *de jure* during the hold over period.<sup>12</sup> Where, however, the law does not provide

for holding over, such holdover incumbent is not a judge *de jure*.<sup>13</sup> He or she is, rather, in for no term<sup>14</sup> but holds the office only until it is filled by competent authority<sup>15</sup> or until the next election.<sup>16</sup> His or her incumbency does not prevent the filling of the office by the authority duly authorized to do so.<sup>17</sup> A holdover incumbent merely performs the functions of the office until a duly qualified person appears<sup>18</sup> and is then bound to yield to that person.<sup>19</sup>

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Footnotes

1 Del.—[Opinion of the Justices](#), 305 A.2d 607 (Del. 1973).

2 **Qualified as meaning elected**  
Ga.—[Hooper v. Almand](#), 196 Ga. 52, 25 S.E.2d 778 (1943).

3 **Qualified as meaning taking the oath of office**  
Okla.—[England v. Walters](#), 2011 OK 36, 255 P.3d 421 (Okla. 2011).

4 **Reelected judge prior to qualification**  
Tex.—[State v. Jordan](#), 28 S.W.2d 921 (Tex. Civ. App. Amarillo 1930), writ dismissed w.o.j., (Oct. 29, 1930).

5 Okla.—[England v. Walters](#), 2011 OK 36, 255 P.3d 421 (Okla. 2011).

6 Okla.—[England v. Walters](#), 2011 OK 36, 255 P.3d 421 (Okla. 2011).

7 Ky.—[Hancock v. Queenan](#), 294 S.W.2d 92 (Ky. 1956).

8 Conn.—[State v. Clark](#), 87 Conn. 537, 89 A. 172 (1913).

9 Mo.—[State ex inf. Crow v. Dabbs](#), 182 Mo. 359, 81 S.W. 1148 (1904).

10 **Injunction against successor**  
Tex.—[Hardaway v. State](#), 113 Tex. Crim. 436, 22 S.W.2d 919 (1929).

11 Ind.—[State ex rel. Gannon v. Lake Circuit Court](#), 223 Ind. 375, 61 N.E.2d 168 (1945).

12 As to the creation of a vacancy by virtue of the creation of a new judicial office, see § 73.

13 N.J.—[Krieger v. Jersey City](#), 27 N.J. 535, 143 A.2d 564 (1958).

14 **Repeal of statute creating office**  
Fla.—[State ex rel. Landis v. Thompson](#), 125 Fla. 466, 170 So. 464 (1936).

15 Kan.—[State ex rel. Johnson v. Albert](#), 55 Kan. 154, 40 P. 286 (1895).

16 Ark.—[Justice v. Campbell](#), 241 Ark. 802, 410 S.W.2d 601 (1967).

17 Ill.—[People ex rel. Jonas v. Schlaeger](#), 381 Ill. 146, 45 N.E.2d 30 (1942).

18 Tex.—[State v. Jordan](#), 28 S.W.2d 921 (Tex. Civ. App. Amarillo 1930), writ dismissed w.o.j., (Oct. 29, 1930).

19 Conn.—[State v. Clark](#), 87 Conn. 537, 89 A. 172 (1913).

20 As to the definition of a judge *de jure*, see § 8.

21 **Fact judge is holdover did not entitle judge to office**  
Wash.—[Nollette v. Christianson](#), 115 Wash. 2d 594, 800 P.2d 359 (1990).

14 Conn.—[State v. Clark](#), 87 Conn. 537, 89 A. 172 (1913).

15 Ala.—[City of Prichard v. Smith](#), 477 So. 2d 375 (Ala. 1985).

16 Ark.—[McCoy v. Story](#), 243 Ark. 1, 417 S.W.2d 954 (1967).

17 Conn.—[State v. Clark](#), 87 Conn. 537, 89 A. 172 (1913).

18 Ga.—[Garcia v. Miller](#), 261 Ga. 531, 408 S.E.2d 97 (1991).

**Unconfirmed appointee**

Fla.—[State ex rel. Landis v. Bird](#), 120 Fla. 780, 163 So. 248 (1935).

19 Okla.—[Robertson v. Brewer](#), 1945 OK 89, 195 Okla. 222, 156 P.2d 804 (1945).

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